

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Peter Hoy (S7)	Team: Team # 5	CCRB Case #: 201107167	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/02/2011 1:00 PM	Location of Incident: 30 Richman Plaza	Precinct: 46	18 Mo. SOL 12/2/2012	EO SOL 12/2/2012	
Date/Time CV Reported Thu, 06/02/2011 1:06 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 06/02/2011 6:41 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Francis Bryant	00370	927980	046 PCT
2. POM Charles Awani	03219	941374	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jose Bonilla	21279	940973	046 PCT
2. POM Richard Valdez	30750	942563	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Charles Awani	Abuse: PO Charles Awani questioned § 87(2)(b)	
B.SGT Francis Bryant	Abuse: Sgt. Francis Bryant supervised the questioning of § 87(2)(b)	
C.POM Charles Awani	Abuse: PO Charles Awani stopped § 87(2)(b)	
D.SGT Francis Bryant	Abuse: Sgt. Francis Bryant supervised the stop of § 87(2)(b)	
E.POM Charles Awani	Force: PO Charles Awani used a chokehold against § 87(2)(b)	
F.SGT Francis Bryant	Abuse: Sgt. Francis Bryant supervised the search of § 87(2)(b)	
G.POM Charles Awani	Discourtesy: PO Charles Awani gestured obscenely toward § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On June 2, 2011, § 87(2)(b) filed a complaint by telephone with the Internal Affairs Bureau, generating IAB log number 11-25252 (encl. 3A). The same day, he filed a complaint through the Civilian Complaint Review Board's call processing system (encl. 3C-D) regarding the same incident.

On June 2, 2011, at 1:00 p.m., § 87(2)(b) was stopped near 30 Richman Plaza in the Bronx. The following allegations resulted:

- **Allegation A - Abuse of Authority: PO Charles Awani questioned** § 87(2)(b)
- **Allegation B - Abuse of Authority: Sgt. Francis Bryant supervised the questioning of** § 87(2)(b)
- **Allegation C - Abuse of Authority: PO Charles Awani stopped** § 87(2)(b)
- **Allegation D - Abuse of Authority: Sgt. Francis Bryant supervised the stop of** § 87(2)(b)
§ 87(2)(g)
- **Allegation E - Force: PO Charles Awani used a chokehold against** § 87(2)(b)
§ 87(2)(g)
- **Allegation F - Abuse of Authority: Sgt. Francis Bryant supervised the search of** § 87(2)(b)
§ 87(2)(g)
- **Allegation G - Discourtesy: PO Charles Awani gestured obscenely toward** § 87(2)(b)
§ 87(2)(g)
- § 87(4-b), § 87(2)(g)
- § 87(4-b), § 87(2)(g)
- § 87(4-b), § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

On June 9, 2011, § 87(2)(b) was interviewed at the CCRB (encl. 3E-F). His statement was generally consistent with statements he made to medical personnel on June 2, 2011 (encl. 3B), the initial complaint he filed with IAB on June 2, 2011 (encl. 3A) and the complaint he filed with the CCRB on June 2, 2011 (encl. 3C-D). Significant discrepancies are noted in the summary below.

On June 2, 2011, at 1:00 p.m., § 87(2)(b) was jogging in Roberto Clemente State Park directly behind 30 Richman Plaza in the Bronx. An unmarked van stopped near him and four officers exited and approached him. The officers were identified by the investigation as Sgt. Francis Bryant, PO Charles Awani, PO Jose Bonilla and PO Richard Valdez from the 46th Precinct. § 87(2)(b) described Sgt. Bryant as a black male in his 40s who stood six feet and three inches, weighed about 200 to 220 pounds and had a bald head. § 87(2)(b) also said he recognized Sgt. Bryant from a previous incident in which he identified himself as a sergeant and in which an unidentified individual told § 87(2)(b) Sgt. Bryant's name was "Bryant." He described PO Awani as a black male in his early to mid- 30s who stood six feet and two inches, weighed about 230 to 240 pounds and had a bald head. He said PO Awani's nametag had a name similar to "Hawaii." He described PO Bonilla as a Hispanic male in his early to mid-30s who stood five feet and eight inches, weighed about 195 pounds and had tattoos on both forearms. He described PO Valdez as a light-skinned black male in his early 30s who stood six feet and two inches and weighed about 180 to 190 pounds.

PO Bonilla grabbed § 87(2)(b)'s forearms and asked, "What did you drop on ground? Drugs?" § 87(2)(b) denied that he was in possession of any drugs. PO Bonilla told § 87(2)(b) to open his mouth and § 87(2)(b) complied, opening his mouth widely enough for the officer to look in for three to four seconds before closing it. PO Bonilla told him to reopen his mouth, but § 87(2)(b) refused. PO Awani, who was standing behind § 87(2)(b) grabbed § 87(2)(b) by the neck and squeezed his throat approximately six to seven seconds. § 87(2)(b) reopened his mouth and kept it open for another six to seven seconds while PO Awani continued to squeeze his neck. § 87(2)(b)'s breathing was partially restricted and the pressure applied to his neck was strong enough that § 87(2)(b) thought he might pass out. When the officers released § 87(2)(b) § 87(2)(b) said, "This is police brutality." Sgt. Bryant held his left arm up with his hand closed into a fist as though he might strike § 87(2)(b) but did not bring his arm forward, make any striking motions or say anything. Sgt. Bryant then reached into § 87(2)(b)'s right front shorts pocket and removed his ID, which he looked at for a few seconds before returning it to § 87(2)(b)'s pocket. The officers then returned to the police van.

In § 87(2)(b)'s initial complaint to IAB, he alleged that before the officers left, an officer told him, "I'll fuck you up." However, § 87(2)(b) did not mention this allegation in any subsequent accounts of the incident. Furthermore, in § 87(2)(b)'s initial complaint, he said that PO Awani gave him the middle finger before returning to the police van. In his initial complaint to the CCRB, he did not mention any officer giving him the middle finger. In his sworn testimony, he said the officer gave him the middle finger as the officers were driving away.

When the officers left, § 87(2)(b) called 911 and requested that an ambulance respond to his building, located at 30 Richman Plaza. When EMS responded, § 87(2)(b) complained of pain to his neck, but refused to go to the hospital.

Attempts to Contact Civilians

There were no known witnesses to this incident. Accordingly, no other civilians were interviewed.

NYPD Statements:

Subject Officer: PO CHARLES AWANI

- § 87(2)(b) years old years old on the incident date, PO Awani is a black male, stands six feet and three inches, weighs 270 pounds and has black hair and brown eyes.
- On June 2, 2011, PO Awani worked from 9:30 a.m. to 6:05 p.m., assigned to conditions in a black unmarked van with Sgt. Bryant and PO Bonilla.

Memo Book

PO Awani did not make any memo book entries related to this incident (encl. 5A-C). His memo book indicates that he was partnered with PO Valdez at the time of the incident.

CCRB Testimony

On October 27, 2011, PO Charles Awani was interviewed at the CCRB (encl. 5D-E). His statement is summarized below.

On June 2, 2011, at 1:00 p.m., PO Awani PO Bonilla, PO Valdez and Sgt. Bryant were patrolling the park behind 30 Richman Plaza in the Bronx, which is considered a high crime area. The previous night, there had been recent reports of fighting and shootings in that area and the officers had been instructed to patrol the area and write Stop, Question and Frisk Reports. PO Awani was driving, Sgt. Bryant in the front passenger seat. As they were driving, PO Awani noticed § 87(2)(b) standing with his back to the officers, his head down and his elbows held up, as though he was holding something and looking at it.

The officers drove up behind him and stopped about 15 to 20 feet away from him. PO Awani, who had first noticed § 87(2)(b) told the other officers, "I'm going to stop him." Sgt. Bryant did not instruct PO Awani to stop § 87(2)(b). PO Bonilla said, "All right." PO Awani exited and approached § 87(2)(b). His intention at that time was to talk to § 87(2)(b) and learn why he was in the park, possibly ask if he knew anything about the shootings and fighting that had occurred recently in Richman Plaza, and determine whether § 87(2)(b) was in possession of any drugs or contraband. Other than the location, the crime in the area the night before and the way § 87(2)(b) was standing, there was nothing that made PO Awani suspect that § 87(2)(b) may have had drugs or weapons on him. Nothing else raised PO Awani's suspicion about § 87(2)(b).

PO Awani walked up behind § 87(2)(b) tapped him on the shoulder and asked him to turn around. PO Awani asked § 87(2)(b) if he had anything he was not supposed to have, such as weapons. § 87(2)(b) responded, "What are you touching me for?" PO Awani said, "Sir, we're just trying to see what you have right there." § 87(2)(b) accused the officers of harassing him. PO Awani said, "We're not harassing you. You're behind Richman Plaza in a federal park area and we just want to make sure you have business being here." PO Awani asked § 87(2)(b) to show him his hands. § 87(2)(b) showed his hands and said, "I don't got shit on me. This is harassment.... Why are you fucking with me?" PO Awani asked § 87(2)(b) for his ID and explained that he was going to write a Stop, Question and Frisk Report. PO Awani explained that every time they stop and talk to someone, they are required to write a report. § 87(2)(b) said he did not have ID.

PO Awani asked for anything with his name or date of birth on it, but § 87(2)(b) said, "I don't have nothing. Search me. I don't have nothing," and flipped his pants pockets inside out. PO Awani and the other officers had not asked § 87(2)(b) to empty his pockets and nothing appeared to be in his pockets. PO Awani did not see § 87(2)(b) put anything in his mouth, did not tell § 87(2)(b) to open his mouth and did not touch, grab or squeeze § 87(2)(b)'s mouth or neck. PO Awani was the only officer that interacted with § 87(2)(b) and none of the officers made any physical contact with § 87(2)(b) other than when PO Awani tapped him on the shoulder.

§ 87(2)(b) continued complaining that the officers were harassing him until the officers

returned to the van. None of the officers gave § 87(2)(b) the middle finger. PO Awani had asked for § 87(2)(b)'s ID to fill out a Stop, Question and Frisk report, but considered § 87(2)(b) free to leave during the incident. PO Awani did not complete a Stop, Question and Frisk Report because § 87(2)(b) did not give the officers any of his information and PO Awani could not complete the form without § 87(2)(b)'s information. Sgt. Bryant did not tell PO Awani to complete a Stop, Question and Frisk Report, but did tell him, "Just annotate it in your memo book."

Subject Officer: SGT. FRANCIS BRYANT

- § 87(2)(b) years old on the incident date, Sgt. Bryant is a black male, stands six feet and three inches, weighs 230 pounds, is bald and has brown eyes.
- On June 2, 2011, Sgt. Bryant worked from 9:15 a.m. to 6:12 p.m., in uniform and in an unmarked van, supervising a group of officers assigned to conditions: PO Awani, PO Bonilla, PO Delacruz, PO Colon, PO Valdez, PO Palando and PO Canellis, who were working in two to three vehicles.

Memo Book

Sgt. Bryant did not make any memo book entries related to this incident (encl. 6A-C).

CCRB Testimony

On September 21, 2011, Sgt. Bryant was interviewed at the CCRB (encl. 6D-E). § 87(2)(g) Significant discrepancies and additional details are summarized below.

At the time and place of occurrence, PO Awani said he saw someone he thought was smoking marijuana. The officers stopped the van and PO Awani and another officer, who Sgt. Bryant could not remember but the investigation determined to be PO Bonilla, approached § 87(2)(b). Sgt. Bryant stayed in the van, which was 30 to 40 feet away from § 87(2)(b). There had not been any discussion about stopping § 87(2)(b) and Sgt. Bryant had not instructed PO Awani to approach § 87(2)(b). PO Awani looked around the area where § 87(2)(b) was standing for about 20 seconds and then returned to the van. Sgt. Bryant could not hear any conversation between PO Awani and § 87(2)(b). He did not see any officer make physical contact with § 87(2)(b) and did not see any officers grab § 87(2)(b) neck or face. Sgt. Bryant did not see any officers search § 87(2)(b). None of the officers gave § 87(2)(b) the middle finger. When PO Awani returned to the van, he said, "It was negative," but the officers did not discuss it further. Sgt. Bryant did not see any officer take § 87(2)(b)'s ID. He did not consider the incident a stop because PO Awani only looked around the area where § 87(2)(b) was standing and § 87(2)(b) had been free to leave. A Stop, Question and Frisk Report was not prepared because it was not necessary. Sgt. Bryant did not make a memo book entry or instruct anyone else to make one because the incident was "not a stop or anything extraordinary."

Witness Officer: PO JOSE BONILLA

- § 87(2)(b) years old on the incident date, PO Bonilla is a Hispanic male, stands five feet and seven inches, weighs 175 pounds and has brown hair and eyes.
- On June 2, 2011, PO Bonilla worked from 9:30 a.m. to 6:05 p.m., in uniform and assigned to conditions in an unmarked van with PO Awani and Sgt. Bryant.

Memo Book

PO Bonilla made the following memo book entries related to this incident (encl. 7A-B): At 1:00 p.m., one male stopped in the rear of 30 Richman Plaza; refused to identify himself; Stop, Question and Frisk Report prepared

CCRB Testimony

On December 15, 2011, PO Bonilla interviewed at the CCRB (encl. 7C-D). § 87(2)(g) Significant discrepancies and additional information are noted in the summary below.

At the time and place of occurrence, the officers were patrolling what PO Bonilla classified a high-crime, drug-prone location. PO Awani appeared to observe something and said, "Stop the van." PO Awani exited the van without any discussion and without explaining what he had seen. Sgt. Bryant had not given him any instructions. PO Awani approached § 87(2)(b) who was standing about ten feet from the van. After a few seconds, PO Awani and § 87(2)(b) began arguing, prompting PO Bonilla to exit the van and stood behind PO Awani. § 87(2)(b) was being uncooperative and belligerent. PO Awani told him to calm down and asked him for ID, which he explained he needed in order to complete a Stop, Question and Frisk Report. § 87(2)(b) cursed and said, "I'm not giving you anything." PO Awani was the only officer who dealt with § 87(2)(b). There was no physical interaction between PO Awani and § 87(2)(b). None of the officers grabbed § 87(2)(b)'s face or neck. None of the officers told § 87(2)(b) to open his mouth or empty his pockets, and none of the officers searched him. The officers then returned to the van, where PO Awani completed a Stop, Question and Frisk Report. Sgt. Bryant never exited the vehicle. None of the officers gave § 87(2)(b) the middle finger.

Officers Not Interviewed

§ 87(2)(b) said he did not interact with PO Valdez. § 87(2)(g)

NYPD Documents

SPRINT § 87(2)(b)

The SPRINT related to this incident (encl. 9A-B) indicates that on the incident date at 1:04 p.m., § 87(2)(b) called 911 and filed a complaint with IAB and that at 1:17 p.m., IAB requested a sergeant and EMS respond to the location in regards to § 87(2)(b)'s complaint that he was choked by an officer while jogging.

Stop, Question and Frisk Log

The Stop, Question and Frisk Log (encl. 10) does not list any Stop, Question and Frisk Reports completed by PO Awani, PO Bonilla, PO Valdez or Sgt. Bryant at the time and date of the incident.

Medical Records

The FDNY Prehospital Care Report (8A-G) indicates that on June 2, 2011, at 1:42 p.m., EMS responded to 30 Richmond Plaza. § 87(2)(b) reported that he was grabbed by the neck by a police officer but refused medical attention. § 87(2)(b) breathing was clear and normal; he had no visible injuries; he had no redness, bruising or swelling; his airway was not compromised and he had the ability to swallow.

Status of Civil Proceedings

- As of February 21, 2012, more than five months after the 90-day filing deadline passed, § 87(2)(b) had not filed a Notice of Claim with the City of New York with regard to the incident (encl. 11).

Civilian Criminal History

- § 87(2)(b), § 87(2)(c)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2E).

Subject Officer(s) CCRB History

- PO Charles Awani has been a member of the service for six years and there have been five substantiated CCRB allegations against him (encl. 2A-B):
 - In CCRB case 200902979, an allegation that PO Awani stopped an individual was substantiated. PO Awani received a command discipline as a result.
 - In CCRB case 200904056, allegations that PO Awani stopped individuals, § 87(4-b), § 87(2)(g) PO Awani received a command discipline as a result.
 - In CCRB case 200919404, an allegation that PO Awani refused to provide his shield number was substantiated. PO Awani received a command discipline as a result.
 - In CCRB case 201103380, an allegation that PO Awani questioned an individual was substantiated. PO Awani received charges as a result.
- Sgt. Francis Bryant has been a member of the service for eleven years and there has been one substantiated CCRB allegation against him (encl. 2C-D):
 - In CCRB case 200910870, an allegation that Sgt. Bryant stopped an individual was substantiated. Sgt. Bryant received instructions as a result.
 - In CCRB case 201103380, an allegation that Sgt. Bryant supervised the questioning of an individual was substantiated. Sgt. Bryant received charges as a result.

Conclusion

Identification of Subject Officers

The question and stop of § 87(2)(b) is being pleaded against both PO Awani and Sgt. Bryant, who acknowledged being present during the incident. PO Awani said he made the decision to approach § 87(2)(b) and that he did this without discussing the decision with or receiving instructions from his supervisor. Sgt. Bryant, as the highest ranking officer on the scene, was responsible for the actions of the officers under his command. § 87(2)(g)

§ 87(2)(b)'s description of the officer that allegedly choked him and gave him the middle finger matches the pedigree information of PO Awani, who acknowledged interacting with § 87(2)(b) § 87(2)(g) § 87(2)(b)'s description of the officer that allegedly searched his pockets matches the pedigree information of Sgt. Bryant, who as the highest ranking officer on the scene, would have been responsible for the search of § 87(2)(b) § 87(2)(g)

Investigative Findings and Recommendations

Allegations Not Pleaded

In § 87(2)(b)'s initial complaint to IAB, he said that during the incident, an officer told him, "I'll fuck you up." § 87(2)(g)

§ 87(2)(b) said that during the incident, an officer held up his fist in a way that § 87(2)(b) interpreted as threatening; § 87(2)(g)

§ 87(2)(b) alleged that PO Bonilla told him to open his mouth so he could look inside it. This allegation is being subsumed by **Allegation F**, which addresses Sgt. Bryant's supervision of the search of § 87(2)(b) and is not being pleaded separately.

Allegation A - Abuse of Authority: PO Charles Awani questioned § 87(2)(b)

Allegation B - Abuse of Authority: Sgt. Francis Bryant supervised the questioning of

§ 87(2)(b)

Allegation C - Abuse of Authority: PO Charles Awani stopped § 87(2)(b)

Allegation D - Abuse of Authority: Sgt. Francis Bryant supervised the stop of § 87(2)(b)

It is undisputed that PO Awani questioned § 87(2)(b) § 87(2)(g). § 87(2)(b) alleged that the officers questioned him and physically grabbed him. PO Awani admitted approaching § 87(2)(b) questioning him and asking him for his ID, but the officers denied that any of them grabbed § 87(2)(b). Prior to conducting the stop, PO Awani told the other officers, "I'm going to stop him." PO Awani said his intention was to determine whether § 87(2)(b) had any drugs or contraband on him. PO Awani acknowledged that during the interaction, he ordered § 87(2)(b) to show him his hands, but said that he considered § 87(2)(b) free to leave. PO Awani said that at the end of the encounter, he attempted to get § 87(2)(b)'s ID because he believed the interaction warranted the completion of a Stop, Question and Frisk Report; however, no Stop, Question and Frisk Report was filed. Although Sgt. Bryant said he did not consider PO Awani's actions a stop, he also noted that from his position in the van, he could not hear the interaction between PO Awani and § 87(2)(b) and thus, was not well-positioned to determine the extent to which § 87(2)(b) was free to leave.

According to People v. Keita 929 N.Y.S.2d 202 (2011) (encl. 1A-H), an officer making physical contact with a suspect constitutes a stop, but a verbal command such as "show your hands" only constitutes a common law inquiry. According to People v. DeBour 40 N.Y.2d 210 (1976) (encl. 1I-J), an officer must have a founded suspicion that criminality is afoot in order to question a person. According to People v. Hampton 200 A.D.2d 466 (1994) (encl. 1K-M), a high incidence of crime at a location alone does not justify police intrusion against people in that area, and innocuous behavior does not generate founded suspicion that crime is at hand.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E - Force: PO Charles Awani used a chokehold against § 87(2)(b)

§ 87(2)(b) alleged that PO Awani grabbed his neck and squeezed it hard enough to partially restrict his breathing. PO Awani denied using any force against § 87(2)(b) and said the only time he touched him was when he tapped him on the shoulder. PO Bonilla, who the investigation determined to be the only other officer that would have been in a position to see the alleged force, also denied that PO Awani used any force against § 87(2)(b). Medical records indicate that § 87(2)(b) called 911 immediately after the incident and complained that an officer had grabbed his neck and choked him. He made similar statements to the EMS personnel that responded to the scene; however, medical records indicate that § 87(2)(b) refused medical attention and had no physical signs of having been injured or choked. Medical personnel described § 87(2)(b) breathing as clear and normal.

§ 87(2)(g)

Allegation F - Abuse of Authority: Sgt. Francis Bryant supervised the search of § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) alleged that that Sgt. Bryant reached into one of his shorts pockets and that PO Bonilla told § 87(2)(b) to open his mouth so he could look inside. Sgt. Bryant denied exiting the van or searching § 87(2)(b). PO Bonilla denied telling § 87(2)(b) to open his mouth. All the officers testimonies were consistent that § 87(2)(b) was not searched. § 87(2)(g)

Allegation G - Discourtesy: PO Charles Awani gestured obscenely toward § 87(2)(b)

§ 87(2)(b) alleged that during the incident, PO Awani stuck up his middle finger in § 87(2)(b)'s direction. § 87(2)(b)'s statements were inconsistent about when this action allegedly occurred. All the officers denied that any officer gave § 87(2)(b) the middle finger or made any obscene gestures towards him. § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Team: 5

Investigator:

Signature

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Date

Supervisor:

Title/Signature

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Reviewer:

Title/Signature

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Reviewer:

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